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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/535,457	03/24/2000	Fred Christian Baij	29462	2374

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WILHELM LAW SERVICE, S.C.
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APPLETON, WI 54911

EXAMINER

NGUYEN, CHI Q

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 04/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/535,475
52

Applicant(s)

ELECK, STEVEN W.

Examiner

Chi Q Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2001.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 and 65-75 is/are pending in the application.
- 4a) Of the above claim(s) 31-64 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 and 65-75 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2000 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-30 and 65-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Varoglu (US 5,782,054) in view of Thomas (US 4,845,858).

Varoglu discloses a wood wall structure comprising a top plate 10, a bottom plate 12 made of nominal 2x4 in. lumber, both plates 10 and 12 having first, second ends, lengths there between, front, back surfaces, opposing sides extending between the front and back surfaces along the lengths and thickness dimensions between the front, back surfaces, a longitudinal groove 14, a plurality of vertical studs 20 extending between the bottom plate and the plate 10, 12, respectively, and evenly spacing along the plates, central sheath panels 16 are contained within a pair of nominal 2x2in. lumber studs 36 (figs. 1-7, cols. 2-4).

Varoglu does not disclose expressly a plurality of stud locator markings spaced long the lengths of elongated pieces of lumber, each of the plurality of stud locator markings comprising marking material deposited directly on the respective elongate piece of lumber at surface, including sets of 2x2 stud locator markings, spaced about 8in., 16in., 24in., leading edge-to-leading edge, variations in spacing between stud locator markings on a framing lumber product being consistently no more than 0.13in.

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leading_edge-to-leading_edge, being devoid of location marking indicators away from stud locator markings appearance differences, which are not color differences.

Thomas teaches a stud locating tape 22 available in roll making type tape base in 1.5in., 3in., and 5in. widths and adhesively secured to surfaces, a stud locating tape 22 itself presents colored indicia portions 22a-22b-22c being representative for 16in., 24in., 48in. stud 17 centers (see fig. 1, cols. 1-2).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify and combine Varoglu's lumber construction with using Thomas' stud locating tape. The motivation for doing so would have been to provide constructors more accuracy of placement of the studs into top and bottom plates thus it could minimized the installation time and cost saving.

With regards to the claims 2-6, 13-20, 24-28, 66-70, Varoglu and Thomas do not specifically teach interval of spacing and markings are not different in colors. Examiner considers it would performed as a functional equivalence as Applicant's invention and have been an obvious matter of design choice to apply stud marking locator directly on plates, since it has been held that rearranging parts of an invention involves only routing skill in the art. In re Japikse, 86 USPQ 70.

Response to Arguments

3. Applicant's arguments with respect to claims 1-30 and 65-75 have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chi Q. Nguyen whose telephone number is (703) 605-1224, Monday-Thursday (7:00-5:00), Fridays off or examiner's supervisor, Lanna Mai can be reached at (703) 308-2486. The fax number for the organization where this application or proceeding assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

CQN
4/19/02

LANNA MAI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

